spaces are not common areas to the rest of the building, although they might be said to be common as among the interconnectors.

Thus, the use of factors, such as rentable to usable for common areas and rentable to usable for interconnector ingress/egress areas are reasonable for operation and maintenance cost sharing. Furthermore, such factors are common factors used in the pricing of real estate floor space in the facility management industry.

V. TERMS AND CONDITIONS OF EIC TARIFF

A. Security Requirements

A number of commentors continue to complain about the LECs' security requirements.[89] The objections seem to have found their fundamental element: price.[90]

While U S WEST's price for its security service is, in some particulars, deemed "reasonable,"[91] other aspects are claimed --

---

[89]See, e.g., ALTS at 29-31.

[90]The objections are lodged regardless of whether the security arrangements proposed by a LEC are of a mechanical nature or an escort-type service (such as proposed by U S WEST). See, e.g., id. at 29-31.

[91]ALTS made this observation when comparing U S WEST's security escort provisions with those of Southwestern Bell Telephone Corporation ("SWB"). See id. at 30. Noting that U S WEST's security rate was $10-$15/hour and SWB's rate was $31.00 per half hour, ALTS found U S WEST's rate to be the more reasonable.

The Commission should be aware of something that U S WEST has stated repeatedly in defense of our EIC Tariff. U S WEST is using an independent contractor escort service to implement the

(continued...)

by the same commentor -- to be outside the "practice of the telecommunications industry."[92] That is simply incorrect.

There are various CAP practices with regard to security, and U S WEST discusses one of them in our Direct Case[93] -- that of Metropolitan Fiber Systems of Philadelphia ("MFS of PA").[94] In fashioning our own security practices, U S WEST looked at practices of other companies in the industry to test the reasonableness of our own proposal. We found comfort in the fact that our proposed security provisions were not out of line with at least some of the practices currently in place.

---

[91](...continued)
security measures that we deem necessary for EIC service. Our business decision to do so was based on many factors, including the professional expertise of the contractor, our desire not to pull our employees away from other job responsibilities, our desire to maximize response time for interconnectors and eliminate even the possibility that U S WEST would be alleged to have been "unresponsive" to an interconnector's request for access, and so on. Had U S WEST used our own employees to fulfill this "escort" function, the rates that we charge for this aspect of security would have been much higher than those reflected in our current EIC Tariff. Our employee loaded labor rate would not have permitted the escort provisions to be priced as they currently are.

[92]See id. at 31. In support of the "industry practice," ALTS appends a single affidavit from a single CAP (id. at Appendix A). With all due respect to the CAPs in the country, a single CAP practice does not an industry practice make. As is demonstrated below, different CAPs do different things. We assume similar variations are demonstrated by those interexchange carriers ("IXC") who provide for collocation.

[93]See U S WEST Direct Case at 58-59.

[94]See Metropolitan Fiber Systems of Philadelphia, Inc., Regulations and Schedule of Interstate Charges Applying to Network Services Between Fixed Points in the Philadelphia Metropolitan Area, Supplement No. 2 to Tariff Access, Telephone PA. PUC No. 2, Section 5.b, Page 3A, effective November 30, 1992 ("MFS PA. Tariff").

With regard to those commentors who challenge more discrete elements of our security rate structure, such as charging for travel time,[95] U S WEST's EIC Tariff charge is appropriate. As we stated in our Direct Case,[96] U S WEST will be charging interconnectors on a direct pass-through basis for the security escort services. Since U S WEST will be billed for the travel time by the independent contractor security service, it is a cost that U S WEST needs to recover, most appropriately from the cost causer. The inclusion of travel time is not an extraordinary element or an EIC aberration. U S WEST has had similar provisions in our tariff offerings for many years.[97]

B. Matters Pertaining to Securing Leased Physical Space

1. Space Square Footage and Use Requirements

TCG and Teleport/Denver continue to attack the LECs' minimum/maximum space requirements for EIC service.[98] Teleport/Denver argues that no space requirements are

---

[95]See, e.g., ALTS at 29-30.

[96]U S WEST Direct Case at 63.

[97]See, e.g., U S WEST's Tariff F.C.C. No. 1 at § 13.4.2(B). The travel time is included in the time for installation during business hours, as part of nonrecurring charges. A call-out of a U S WEST employee at a time not consecutive with the employee's scheduled work period is subject to a minimum charge of four hours. The four hour increment includes the travel time for the employee to travel to and from the location at which the work will be performed.

[98]See TCG at B-1 to B-2; Teleport/Denver at 23-24.

necessary,[99] while TCG challenges discrete provisions of the LECs' tariffs.

For example, TCG admits that 100 square feet is generally reasonable for EIC service, but argues that less space should be permitted to be occupied in those circumstances where 100 square feet is not available.[100] From U S WEST's perspective, we do not find TCG's arguments persuasive.

As we stated in our Direct Case,[101] U S WEST based its 100-square foot minimum floor space requirement on guidelines as to clearances required between the equipment bay and the surrounding enclosure. This was determined to be the smallest enclosable space practical to still maintain the working space around the typical equipment line-up -- three bays, 30" wide x 18" deep each[102] -- and to prevent the possible conflicts of Occupational Safety and Health Administration ("OSHA") and fire and safety regulations. Furthermore, it is U S WEST's experience that 100 square feet will adequately accommodate equipment layouts for fiber and microwave equipment.

U S WEST's minimum 100-square foot requirement for EIC service is, obviously, neither overreaching nor unreasonable. Rather, it provides the minimum amount of square footage that

---

[99]See id.

[100]See TCG at B-1 to B-2.

[101]See U S WEST Direct Case at 74.

[102]This is a correction to the information presented in U S WEST's Direct Case, where we said "three bays, 30" wide x 8" deep each."

U S WEST considers reasonable and safe for the occupation of its property. While interconnectors might desire less, there is nothing so unreasonable about U S WEST's provision that it should be considered unreasonable under the Communications Act.

TCG argues, also, that there should be no maximum square footage requirement, on the grounds that interconnectors have no incentive to ask for more space than they need (an observation that appears contrary to that made by Teleport/Denver)[103] and that the market will resolve space occupation considerations.[104] All of this may be true. However, it may not be. U S WEST should not have to take a "wait and see" attitude with regard to its own service offering and central office property.

The same is true with regard to "effective use" provisions. TCG argues that U S WEST did not offer any credible reason for our EIC Tariff requirement that 50% of the interconnector's leased physical space must be "effectively used." U S WEST disagrees. In our Direct Case, we discussed how efficient use of our central office space was necessary to assure that the space was not warehoused and was available for other EIC inventory, if not actually needed by the interconnector.[105]

In their totality, the comments of those opposing LEC space and use requirements, simply continue to ignore the fact that the Commission authorized the LECs to put certain provisions in their

---

[103]See Teleport/Denver at 23-24.

[104]See TCG at B-2.

[105]U S WEST Direct Case at 86.

tariffs to protect against warehousing.[106] Clearly, since the Commission declared the reasonableness of such provisions very early on in this process, the LECs' concerns in this area are not unfounded; and U S WEST's EIC Tariff provisions are reasonable in their relation to the concern.[107]

U S WEST's maximum square footage limitation operates, at least initially, to assure space to multiple interconnectors in any given central office. Through this square footage limitation, U S WEST retains the ability to ensure that the interconnector is leasing space for current equipment needs and not warehousing space for future needs. The provision provides U S WEST with the opportunity to retain limited proprietary control over our property for the provision of our own non-EIC services and for the provision of services by other interconnectors desirous of providing services from leased physical spaces.

This is particularly important given the Commission's recently-announced initiatives regarding switched EIC -- an action that can reasonably be expected to produce a new raft of

---

[106]EIC Order, 7 FCC Rcd. at 7408 ¶ 80.

[107]TCG claims, erroneously, that U S WEST's EIC Tariff provisions (specifically, those dealing with "effective use of space") "have no rational relationship to any legitimate concern of the LEC about space utilization, since they do not consider whether other parties need the space, how efficiently other parties (or the LEC) are using their space, whether many or few cross connections are being provided to the space, or the like." See TCG at B-8. TCG is incorrect. In U S WEST's Direct Case, we addressed just these issues (see U S WEST Direct Case at 88-89) and indicated how those considerations would affect our enforcement of our EIC Tariff provisions.

potential interconnectors. With no maximum space limitation, the first interconnector to occupy a U S WEST central office could control and restrict competition from other interconnectors for collocation within the same U S WEST central office.

Teleport/Denver's suggestion that the LECs' EIC Tariffs do not need any space provisions because interconnectors will not ask for more space than they need; and if they do, they can fight it out between/among themselves either before the Commission or in the courts,[108] ignores the fundamental fact that U S WEST owns the real estate in question, is providing that real estate as a Title II service, and has the right to attach to that service offering reasonable terms and conditions. It would be totally imprudent for U S WEST, being able to foresee that competing requests for space will occur absent reasonable space occupation provisions, to remain silent in this matter.

Furthermore, as a matter of business and operations management, U S WEST is not interested in being an affected party to a dispute between two private individuals over the occupation of U S WEST's real estate. U S WEST is the owner of the property in question -- not some secondary interested party. We have the right to act like an owner, and to establish reasonable space provisions in our EIC Tariff. We have done so.

Over time, and with experience, U S WEST may determine that neither minimum nor maximum space requirements are necessary. However, until we have had a reasonable opportunity to understand

---

[108] See Teleport/Denver at 23.

the market realities of EIC service, the configuration of our EIC tariffs is demonstrably reasonable.

2. Additional Space as a "New Order"

TCG continues to argue against the LEC practice that orders for additional EIC space are sometimes treated as "new orders."[109] TCG argues that the LECs keep giving the same explanation for the practice, arguing "that they will follow the same processes and incur all the same costs -- but none explain why it is necessary to have this duplication of effort, or whether they have examined the possibility that it might not cost as much."[110] TCG then goes on to speculate that a request for additional space will not cost as much to process as a request for initial space.

TCG is wrong in all aspects of its argument. The reason the same explanation is given repeatedly by the LECs to respond to this argument is because the explanation is the explanation. And, as U S WEST's Direct Case made clear,[111] the explanation has been examined. It does cost U S WEST as much to process an order for additional service as it does to process an order for initial EIC service.

A request for additional service requires U S WEST to undertake all the same processes (e.g., preparing the quote,

---

[109] See TCG at B-3; ALTS at 34.

[110] TCG at B-3.

[111] See U S WEST Direct Case at 86-89.

redesigning the space, adding more cable for new power requirements, modifying cable racking to accommodate new fiber requirements) that we must undertake for the initial occupancy. U S WEST is entitled to recover these costs.

It is certainly not U S WEST's responsibility to "cover" EIC service set-up charges, nor to treat the costs associated with processing additional orders for EIC space as though the requests were not processed separately, at different times and involving different central office geographies. If costs are incurred by the interconnector to add space at a later date, these costs should not be charged against net revenues and borne by the LEC's shareholders.[112] It is reasonable for U S WEST to charge for processing requests for additional space in the same manner we do orders for initial space, recovering all costs from the interconnector who generates the request for additional space.

To allow an order for additional space to be treated as an addendum to the original agreement, with a simplified procedure and a correspondingly lower nonrecurring charge, could only be accomplished on an interconnector-specific request basis, i.e., an ICB (which structure the Commission has rejected). Modifications associated with ordering additional space may require at or near the same level of activities associated with building a new space. But until actual requests for additional

---

[112]This was suggested by Teleport/Denver. See Teleport/Denver at 24. The suggestion is, of course, totally out of line with a regulatory model that requires the cost causer purchasing a Title II communications service to bear the costs associated with that purchase.

space are received, these modifications are unknown. Thus, U S WEST's EIC Tariff does not currently accommodate subsequent changes with lower nonrecurring charges.

C. Service Termination or Eviction Requirements

U S WEST has adequately defended our service termination and eviction provisions, despite the arguments of those who claim to the contrary. With one exception (i.e., the fact that an interconnector customer will not be required to vacate its leased physical space in the absence of a material breach -- a termination provision more beneficent than that afforded to any other customer),[113] U S WEST's service termination provisions are the same for interconnectors as for other U S WEST customers: a failure to abide by the terms of U S WEST's Tariffs allows U S WEST to terminate service.[114]

---

[113]TCG states that U S WEST's explanation about our material breach provision is confusing. See TCG at B-12, n.**. At its most essential level, a material breach consists of: nonpayment of any U S WEST tariffed service; or a breach of any provision of the EIC Service. In such a situation, an interconnector could be requested to vacate the premises (absent a curing of the breach). If any interconnector violates any provision of any U S WEST tariff, U S WEST retains the right to discontinue the provision of EICT service to the interconnector. While a discontinuance of the EICT might render the interconnector with a "space" that it "cannot do anything with" (see id. (until it resolves the breach with regard to whatever tariff provision is being violated)), it is a far less intrusion into the affairs of the interconnector than being required to vacate the premises for the respective tariff violation.

[114]See U S WEST Direct Case at 92-96. MFS' citation to the Commission decision, AT&T 900 Dial-It Services and Third Party Billing and Collection Services, 4 FCC Rcd. 3429 (1989) ("AT&T 900 Dial-It"), for the proposition that U S WEST's termination

(continued...)

Despite the continuing arguments of commentors about the special nature of their service,[115] or their particular vulnerability to LEC abusive termination practices, the Commission should not interfere with the proffered LEC service termination provisions. In the absence of a separate inquiry on the totality of those provisions and the totality of the customer base or a demonstration that abuses occur with regard to a class of customers called "interconnectors," the Commission has nothing more than the most rank kind of speculation to support a rejection of these provisions.

The Communications Act requires that LECs' tariffs contain reasonable terms and conditions. In carrying out its tariff provisions, a LEC must act reasonably, as well. Thus, speculative concerns, such as those expressed by TCG,[116] that

---

[114](...continued)
provisions are inappropriate is misleading. See MFS at 27, n.50. The "services" being addressed in that decision were different from those under consideration in this proceeding. The Commission, in the AT&T 900 Dial-It decision, determined that AT&T could not disconnect (or refuse to provide) a basic Title II communications service, in those instances where a customer failed to pay for an enhanced service. U S WEST's EIC Tariff seeks to do no such thing. U S WEST, there, retains the right to discontinue an interconnector's Title II EIC service (or refuse other service) in those circumstances where the interconnector is in default of U S WEST payment provisions for Title II EIC service or other Title II communications services or is in material breach of the EIC Tariff itself.

[115]See, e.g., TCG at 26-27.

[116]See TCG at B-16.

"LEC provisions on moves [contain] the potential for abuse," should not be taken over-seriously.[117]

D. Insurance Levels and Liabilities

1. Amounts and Rating Levels

Demonstrating what can only be described as the most cavalier attitude toward the integrity and security of the public switched network, TCG argues that "a collocation arrangement adds no additional equipment, or risk, to the central office than the addition of a few racks of multiplexing equipment."[118] TCG is wrong in its over-simplistic approach to facility management.

The Commission's EIC Order basically took private property, with controlled employee (and limited third party) access and converted it into space available and open to "all parties who wish to terminate their own special access transmission facilities at LEC central offices[.]"[119] While not entirely opening the office to the general public, the fact that many non-

---

[117] Id. For example, TCG later (in its Opposition) says that a LEC tariff provision requiring the LEC to pay for an interconnector's relocations "creates a market incentive which will discourage the LEC from using relocation as a tool to inhibit [competition]." Id. at B-18. This payment obligation/market incentive would, in TCG's opinion, operate to protect against abusive practices with regard to relocation tariff "loopholes." See id. at B-17. U S WEST's EIC Tariff does contain provisions regarding our payments for certain interconnector relocations. Thus, in totality, we assume that our EIC provisions do no violence to TCG's position. Compare ALTS at 37.

[118] TCG at B-21.

[119] EIC Order 7 FCC Rcd. 7403 ¶ 65.

employees of U S WEST will occupy space in our central offices will clearly increase the risk to U S WEST regarding injury to its real estate premises, its private property, and its employees (just ask any insurer of any LEC!).

Since U S WEST requires interconnectors to provide indemnification for losses arising out of their collocation activities on U S WEST's premises,[120] it is only prudent to ensure that the insurers providing the financial backing to such indemnification are indeed financially solvent. Best's financial ratings of insurers is a common benchmark of an insurer's ability to pay. U S WEST's B+XIII rating requirement is not overreaching and should provide U S WEST (as the owner of the property, serving many thousands of customers other than the interconnectors) with a minimum level of assurance regarding coverage of risk.

The failure to have such assurance could itself be devastating. While the risk of loss might be small, should such a risk materialize, the damage can be catastrophic.[121] Should the insurer an interconnector might choose not be able to cover the indemnification responsibility of the interconnector, the financial loss would fall to the interconnector in its personal capacity (a situation U S WEST does not want to occur because of the limited financial resources of some interconnectors) or

---

[120]See U S WEST's Tariff F.C.C. No. 1, § 21.3.13.

[121]Thus, it is not enough to say that the risk of damage is small. So was the risk that the World Trade Center would be bombed. That is only part of the equation.

ultimately could rest with U S WEST, the proverbial deep-pocket property owner.

While some commentors find fault with U S WEST's insurance requirements, the fact is that both interconnector's and U S WEST will be better served by shifting risks of fires and other catastrophes away from each other and onto their insurers. While U S WEST does hold an interconnector responsible for its own negligence with regard to U S WEST's employees and real estate, we have different provisions with regard to property damage. With regard to property damage, each entity to the EIC service (i.e., U S WEST and the interconnector) handles such property damage through its own insurance.

Although it may seem reasonable, in the abstract, for each party to assume liability for its own negligence and to pay the other party for any damage that results from such negligence, this is not a practical solution. Some interconnectors would be put out of business if they were forced to reimburse U S WEST for damage or destruction caused to U S WEST's property as a result of their negligence. Values in many of U S WEST's central offices are well in excess of $100 million just for our central office equipment, much less the replacement cost of the building itself.[122]

---

[122]Sprint argues that an interconnector should not be required to "cover the total investment in a central office because the collocator will have very limited" access and facilities. See Sprint Appendix A, at 17. While U S WEST agrees with Sprint's statement on the extent of an interconnector's access and facilities, the conclusion does not stem from the

(continued...)

Waiver of subrogation provisions for losses covered by property insurance is common practice in real estate leases and are typically available for little or no additional cost to the insured. In fact, standard property insurance policies routinely provide waivers which relinquish the insurer's right to sue a negligent party, so long as the insured party contractually agrees to such a waiver in advance of the loss or damage occurring.

2. Self Insurance

While U S WEST is criticized for our refusal to allow for interconnector self-insurance,[123] we remain wedded to this position. U S WEST's Risk Management and Finance Departments are simply not interested in dedicating the necessary resources to administer a process to review, analyze and approve an interconnector's self-insurance request.

Furthermore, despite a superficial attractiveness to this approach, adoption of it would not necessarily alleviate discriminations among LECs with regard to their implementation of

---

[122](...continued)
premise. Even a small operation, inside a LEC central office, that gets out of control can cause substantial and significant damage. But, in any event, U S WEST's EIC Tariff does not require the interconnector to do what Sprint objects to.

[123]See, e.g., TCG at B-21 to B-22. TCG argues that the "major defense offered" on the refusal to allow for self insurance "is that allowing self-insurance may provide some interconnectors with a competitive advantage over other interconnectors who may not be financially able to self-insure. That was never U S WEST's stated rationale for its position.

a self-insurance program. Self-insurance analyses are very subjective, since self-insurance retentions or programs vary widely and are deeply rooted in each individual organization's management philosophy and appetite for risk. It is doubtful that each LEC would establish the same requirements/parameters. And, it is conceivable that their failure to do so would give rise to continuing interconnector objections regarding the LEC's insurance requirements. From both a practical and financially-responsible perspective, the Commission should permit each LEC to establish the insurance requirements best suited to its operations and its insurance underwriting obligations.

3. Effective Date of Insurance

TCG states that "insurance . . . should not be required to take effect prior to the time an interconnector occupies the space."[124] Since the purpose of insurance is to protect U S WEST from the risks associated with the interconnector's occupancy of our real estate, it is obviously reasonable to require that we have assurance against that risk, prior to the occupancy taking place.

In those circumstances where U S WEST has done the service provisioning to the interconnector's leased physical space, U S WEST does not care if the interconnector's insurance coverage is not effective until the day the interconnector occupies its space. However, if the interconnector is provisioning their own

[124] Id. at B-24.

service, whether it be directly or via a subcontractor(s),[125] a certificate of insurance will be required prior to the interconnector or its subcontractor(s) accessing U S WEST's premises. This kind of leased physical space activity may occur weeks prior to the interconnector actually occupying the leased physical space. Nevertheless, exposure to loss for U S WEST begins the minute any work activities begin by the interconnector or its subcontractor to prepare the space for occupancy.

E. Dark Fiber

The comments to U S WEST's Direct Case provide no additional arguments which support terminating U S WEST dark fiber at an interconnector's leased physical space.[126] Some of the commentors simply ignore the actual issue posed by the Bureau in its Designation Order.[127] The issue that U S WEST was expected to comment on was not the general provision of U S WEST's dark fiber into an interconnector's leased physical space. The Bureau specifically excluded this issue from the scope of its

---

[125]For example, before an interconnector could self-provision its own fiber from the entrance enclosure to its leased physical space, which U S WEST's EIC Tariff permits it to do (either individually or through a contractor), the interconnector would have had to provide U S WEST with a certificate of insurance.

[126]See, e.g., ALTS at 35; MFS at 28; TCG at B-5 to B-6; Teleport/Denver at 25.

[127]Designation Order at ¶ 38(a).

inquiry.[128] Thus, comments focused on this issue are simply misplaced and irrelevant.[129]

Rather, the more focused inquiry was on the matter of the use of dark fiber from a customer's premises (outside the central office) or from within the central office itself to an interconnector's leased physical space in conjunction with a cross-connect.[130] As U S WEST explained,[131] U S WEST will not provide dark fiber in such a situation, because dark fiber terminates on both ends at a customer premises.[132] Neither the interconnector's leased physical space,[133] nor our central office, qualifies for such status.

---

[128]See Designation Order at 23, n.11 (where the Bureau states that the issue is not "whether LECs are required to terminate their dark fiber offerings directly at an interconnector's collocated space without the use of a cross-connect element"). It is clear that part of the Bureau's rationale for excluding this issue was the Commission's representation to the Court of Appeals with regard to U S WEST's obligation to provide dark fiber in an EIC service arrangement.

[129]MFS' argument that the Commission's remarks do not hamstring the Bureau with regard to a reconsideration of this issue are misplaced. See MFS at 30. The Bureau already demonstrated its position to abide by the Commission's remarks and made no indication that it was interested in reconsidering the issue.

[130]See Designation Order at ¶ 38(a).

[131]See U S WEST Direct Case at 80-82.

[132]See U S WEST F.C.C. Tariff No. 1 at § 18.1.

[133]See id. at § 21.4.1(C).

MFS' argument that U S WEST's response is nothing more than "semantic nonsense"[134] is wrong. Rather, it is a lawfully analyzed position, based on language of both our dark fiber and EIC tariffs. Our position should be sustained.

F. Inspections

On the matter of inspections, most commenting parties pick out a particular LEC's (or LECs') inspection provisions that they do not like (or that they deem unwarranted) and then compare it/them against the commentor's preferred inspection provision. The commentors generally argue that it is imperative that the Commission set boundaries around the matter of LEC inspections,[135] to prevent against speculative and potential "abuses."

---

[134]See MFS at 28. Compare ALTS at 35 (arguing that the term "customer premises" cannot be so sharply curtailed by the LECs); TCG at B-5 to B-6 (arguing that taken to its logical extreme, U S WEST's definition of "customer premises" would justify U S WEST in refusing to provide any service to a collocation space). TCG is incorrect. U S WEST is, under the Commission's theory of EIC, providing a Title II communications service to an interconnector when it provides EIC service, including the underlying real estate. That Title II service is not converted, under any Commission order, rationale or tariff provision of U S WEST, into an interconnector's "customer premises"; Teleport/Denver at 25 (arguing that an interconnector's premises is a "customer premises" regardless of whether the space is owned or leased). While U S WEST's Tariff uses the term leased physical space, our EIC Tariff also makes clear that an interconnector has only a license to use the space for purposes of EIC service (see U S WEST EIC Tariff at § 21.4.1(A) -- the space is not licensed or leased to the interconnector for general occupancy purposes).

[135]See, e.g., TCG at B-33 and B-34; and Teleport/Denver at 30.

To U S WEST's knowledge, no one criticized U S WEST's inspection provisions directly. However, some of the proposals made by the commentors would be contrary to the way U S WEST's provisions are currently structured.

For example, some commentors argue that, beyond the initial occupation inspection, inspections (whether routine or in the nature of health and safety)[136] should not be permitted more than once[137] a year, and that a time certain be provided for in the tariff with regard to interconnector advance notification of the inspections.[138] While such proposals may sound reasonable in the abstract, they ignore the specifics of the various-filed LEC Direct Cases.

In U S WEST's case, for example (and as we made clear in our Direct Case),[139] U S WEST's inspection provisions are necessary in order to meet our obligations as imposed on us by our insurance underwriters. Those underwriters are not constrained to such an inspection schedule or to such advance notification provisions (although advance notification is given, and will be

---

[136]TCG seeks to impose on health and safety inspections (e.g., those conducted by OSHA, fire marshalls) the same requirements it imposes on routine inspections. U S WEST has no control over how often or when OSHA or fire marshall inspections are to take place. Thus, U S WEST would be in no position to make any commitments as to their frequency or their advance notification practices.

[137]See, e.g., TCG at B-34; and Teleport/Denver at 30.

[138]See, e.g., TCG B-34 (two weeks); and Teleport/Denver at 30 (15 days).

[139]See U S WEST Direct Case at 141.

given to interconnectors). Thus, we could not allow an entity occupying our central office space to demand such an inspection schedule, as a condition of the occupancy.

In our EIC Tariff, U S WEST has already expressed our willingness to provide reasonable advance notice to interconnectors and to have interconnectors present for inspections.[140] The Commission should reject the suggestion of those commenting parties who propose mandatory advance notification requirements and the number of inspections that can occur in any given time period. Unless it is demonstrated (rather than simply alleged, and alleged as a matter of pure speculation) that there is some abuse that occurs in this area, the LECs' EIC Tariff provisions (including those of U S WEST) should be permitted to remain in effect as drafted.

G. Letters of Agency

U S WEST's position that we will not permit a Letter of Agency ("LOA") arrangement with regard to our EIC service offering is challenged by some commentors.[141] Because U S WEST's position is reasonable, those challenges should be rejected.

---

[140] See U S WEST's EIC Tariff § 21.4.1.5. See also U S WEST Direct Case at 141.

[141] See Sprint Appendix A at 21, TCG at B-30, Teleport/Denver at 29-30.

As U S WEST stated in our Direct Case,[142] U S WEST's EIC offering is one wherein an interconnector can order leased physical space if and only if it is also purchasing an EICT.[143] We will not permit an LOA with regard to the leased physical space because of the idiosyncratic elements associated with that aspect of EIC (i.e., the insurance requirements, etc.). But we will also not permit an LOA with regard to the EICT element of EIC service, even if that EICT is "dedicated" to the use of some specific interconnector customer. Both the model of our EIC service offering, as well as the ordering/billing burdens associated with allowing such bifurcated offering, argue against allowing an LOA.

U S WEST is, apparently, the only former BOC that will not allow LOAs with regard to our EIC service offering. And, we are taken to task for that outlier position, as though the fact that we are alone in our position demonstrates that it is unreasonable. This is a dangerous argument and U S WEST cautions the Bureau against falling into the simplicity of its design. Industry participants do not, either by their uniformity of position, uniformity of service design, or uniformity of price structure, determine what is "reasonable" under the Communications Act.

Since divestiture, the Commission has had to deal with seven former subsidiaries of AT&T. Their businesses are different,

---

[142]See U S WEST Direct Case at 139-140.

[143]See U S WEST EIC Tariff at § 21.2.1(A)(1), 21.2.1(A)(2).

their networks are different, their company strategic goals and corporate missions are different. Whether a practice is reasonable or unreasonable for any particular company should involve a "stand alone" decision under the Communications Act requirement that carriers should file tariffs with reasonable conditions. Just because one company does not fit the "mold" does not mean that their proposed tariff or practice is unreasonable (although it might mean more work, or adaptions for companies dealing with that company).

A failure to pay special attention to this argument can lead to unlawful conduct by the Bureau or by the Commission: a delegation to a community of companies the determination of what is reasonable. The range of "reasonableness" with regard to any specific company action is fairly broad, especially as the Communications Act lodges -- in the first instance -- product/tariff definition in the companies involved. An individual company's action does not become converted to "unreasonable" just because no one else is doing it. Rather, the action can remain reasonable -- but different.

U S WEST, thus, encourages the Bureau to sustain U S WEST's position with regard to LOAs. It is <u>not</u> an unreasonable position, albeit it is different. The Communications Act does not require that all companies (despite their diversity) conform

to the most common denominator of conduct of any single company when providing service to an equally diverse marketplace.[144]

H. Miscellaneous Objections

Teleport/Denver rails against two of U S WEST's EIC Tariff provisions that were not made subject to investigation by the Bureau's Designation Order: specifically, the provision pertaining to ex-U S WEST employees being in the leased physical space of an interconnector and the provision dealing with alien status.[145]

---

[144]While U S WEST raises this matter here, with regard to LOAs, our argument and position is not confined to this challenge to our tariff. Rather, our position is a general one. Much (if not most) of the oppositions to the LECs' direct cases involve comparing the provisions of one LEC against another. The logical fallacy associated with such a comparison, when it is combined with the concomitant argument that "if X differs from Y, then X is unreasonable" permeates the oppositions. The Bureau should not fall into the same fallacious trap.

[145]See Teleport/Denver at 19-20.

Neither of these U S WEST EIC Tariff provisions was made a part of the Bureau's investigation.[146] U S WEST is confident in the reasonableness of these provisions.

VI. CONCLUSION

For the above-stated reasons, the objections filed against U S WEST's EIC Tariff should be rejected. U S WEST has demonstrated the reasonableness of the various tariff provisions

---

[146]Despite Teleport/Denver's irrelevant and flawed analysis on the issue of prior employees being on U S WEST's premises (especially its legal analysis comparing U S WEST's provision to some kind of "non-competition" provision, see id. at 21, n.4), U S WEST reminds the Bureau of our prior defense: that U S WEST has over the past five years, as have many of the LECs, caused the involuntary termination of a number of employees. And, as a matter of prudent asset and security management has the right to "pass on" the qualifications of a former employee -- now in the employ of a competitor. However, as stated in our Reply, U S WEST was willing and did in Transmittal No. 362 which became effective June 16, 1993, to amend our tariff to say: "The Officer/Director will not unreasonably withhold permission for the former employee to have access." Reply at 65-66 and EIC Tariff at 21.6.2.2(B).

With regard to non-citizen employees, as stated in our Reply and later filed in Transmittal No. 362, U S WEST modified this provision to limit the requirement of U.S. Citizenship to those cases where it is required by agencies of Local, State or Federal Government Reply at 64 and EIC Tariff at 21.6.2.2(B).